(1)
Supreme Court, U.S.
FILED
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No.

In the Supreme Court of the United States

Marilyn I. Ellman

Petitioner,

vs.

Woodstock School District #200

Respondent,

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit
Chicago, Illinois

PETITION FOR A WRIT OF CERTIORARI

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41 pp

QUESTIONS PRESENTED

1. Whether the Northern District Court of the 7th Circuit of Illinois, Western Division, erred in not providing the Pro Se litigant Ellman with the new Pro Se local rule 56.2, adopted for Pro Se litigants only?

2. Whether the U.S. Seventh Circuit Appeal Court, also, erred by charging Ellman, Pro Se, with filing a frivolous law suit, and granting respondent's legal fees; even though they knew that she was denied the benefit of the new local rule 56.2 adopted for Pro Se litigants?

3 .Whether Local Rule 54.3 is constitutionally unfair as the rule enlarges the time to file for attorney's fees, beyond the time set by Congress in FRCP 54(d)(2)(B) and therefore constitutes a usurpation of congressional power?

4. Whether it was a reversible error for the Northern District Court of the 7th Circuit of Illinois, Western Division Judge Phillip Reinhard, to strike affidavits and statements of facts from a Pro Se litigant, who has demonstrated a valid cause of action for Age and Sex Discrimination, and thereafter to grant Summary Judgment to the opposing Respondent party over a technical non-compliance of an exceptionally harsh local rule, 56.1, without Judicial Notice, a warning, and an opportunity to correct the non-compliance with the advantage of the new Pro Se local rule 56.2, of which Ellman was not informed of?

5. Whether Local rules 56.1 and 54.3 for the Northern District Court of the 7th Circuit of Illinois, are unconstitutional because they introduce basic Procedural innovations, and as they impair fundamental Civil Liberties guaranteed by Amendments 5, and 7, and 14, of the U.S. Constitution; in that the local rules exceed the congressional grant in the corresponding FRCP, because they allow forfeiture without proper Judicial Notice, and enlarge the time and scope of the requirements of FRCP 56 and 54 (d) (2) (B)?

6. Whether pro Se Litigants should receive consideration by the court in presenting their case, and whether when it is shown that the Pro Se litigant has a valid cause of action they should be held to a lesser standard than attorneys in order to present their case to a fact finder as the Supreme Court mandates, as laid down, in *Haines v. Kerner*, 404 U.S. 519 (1972), and Swierkiwicz v. Sorena, 534 U.S. 506 (2002)?

7. Whether FRCP 83 prohibits the District Courts from making or enforcing "any" Local Rule that is not consistent with the FRCP?

8. Whether The District Court Grant of Summary Judgment was an abuse of discretion, or a clear Error of Law as a violation of Federal Rule of Civil Procedure 83?

9. Whether the District Courts are abusing the Mandate of the Supreme Court, holding in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); and *Matsushita Electric Industrial Co. vs. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), by using the Summary Judgment procedure to clear their calendars and denying parties with valid claims an opportunity to present their case to a fact finder?

10. Whether the Supreme court should revisit . *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); and *Matsushita Electric Industrial Co. vs. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), so as to clearly set guidelines for the proper use and application of the Summary Judgment procedure by the District courts?

LIST OF PARTIES TO PROCEEDING

Petitioner consists of Marilyn I Ellman, resident of Wisconsin, Pro Se, a School Psychologist with the Respondent, Woodstock School District #200, Woodstock, Illinois.

Respondent consists of Woodstock School District #200, Woodstock, Illinois.

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OPINONS BELOW

Petitioner seeks review of the opinions/Orders below filed by the United States Court of Appeals for the Seventh Circuit and the decisions from the United States District court for the Northern District of Illinois:

[1] The Opinion of the U.S. Court of Appeals for the Seventh Circuit, upholding the district court was entered on March 5, 2003.

The Judgment and opinion of the United States Court of Appeals, appears at Appendix **A** to the petition and is unpublished pursuant to seventh circuit local rule 53.

[2] The Order denying Appellant's petition for rehearing en banc and motion to vacate the order granting sanctions was entered on May 13, 2003.

The order of the United States Court of Appeals Appears at Appendix **B** to the petition and is unpublished pursuant to seventh circuit local rule 53.

[3] The Judgment & Memorandum Opinon of the United States District Court Northern District of Illinois, Western Division granting Summary Judgment for the defendant was entered, February 26, 2001.

The Judgment of the United States District Court Northern District of Illinois, Western Division

Appears at Appendix **C** to the petition and is unpublished.

[4] The Order for payment of costs (fees) by Plaintiff, from the United States District Court Northern District of Illinois, Western Division was entered August 22, 2001.

The Order for the United States District Court appears At Appendix **D** to the petition and is unpublished.

[5] The Order for payment of fees (costs) by Plaintiff, from the United States District Court, Northern District of Illinois, Western Division was entered October 1, 2001.

The Order for the United States District Court appears at Appendix **E** to the petition and is unpublished.

This Petition follows:

Jurisdiction

A -- District Court

Jurisdiction of the United States District Court, Northern District of Illinois, Western Division was based on diversity of citizenship. Plaintiff is a resident of the State of Wisconsin and defendants are residents of the State of Illinois. The amount in controversy exceeds $75,000. Jurisdiction is also claimed under 28 U.S.C. 1331, 1332, 1343, 1367 and 42 U.S.C. 1983, civil rights and Title VII. Venue is proper as the complained of actions occurred in the district and division, see 29 U.S.C. 1391.

B -- Appellate Jurisdiction

The jurisdiction of the appellate court was claimed under U.S.C. 1291 and/or U. S. C. 2107.

The dates of the lower court decisions, The United States Court of Appeals for the Seventh Circuit, are:

1. The Opinion of the U.S. Court of Appeals for the Seventh Circuit was entered on May 5, 2003 upholding the district court and granting sanctions.

2. The Order of the U.S. Court of Appeals for the Seventh Circuit denying petition for rehearing en banc and motion to vacate the order granting sanctions was entered on May 13, 2003.

C.--JURISDICTION OF SUPREME COURT

The Supreme Court enjoys jurisdiction to review final judgments of the United States circuit Courts by virtue of 28 U.S.C. 1254 (1):

28 U.S.C. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

The petition for Certiorari should be filed within 90 days of the appellate court's date of the denial of the timely petition of rehearing en banc opinion. The 90 days should

commence to run from – May 13, 2003. The petition is therefore due on or before August 11, 2003, and is timely filed by that date.

Service has been made on the respondents, as required by Supreme Court Rule 29.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

Local Rule 54.3.

Local Rules, United States District Court
Northern District Of Illinois

LR 54.3 Attorney's Fees and Related Non-taxable Expenses
(a) Definitions; General. [omitted]
(b) Time to File. Either before or after the entry of judgment the court may enter an order with respect to the filing of a fee motion pursuant to Fed.R.Civ.P. 54. Unless the court's order includes a different schedule for such filing, the motion shall be filed in accordance with the provisions of this rule and shall be filed and served **no later than 90 days** after the entry of the judgment or settlement agreement on which the motion is founded. If the court has not entered such an order before a motion has been filed pursuant to Fed.R.Civ.P. 54(d)(2)(B), then after such filing the court may order the parties to comply with the procedure set out in this rule as a post-filing rather than as a pre-filing procedure.

[End of relevant section]

Rule 54 FEDERAL RULES OF CIVIL PROCEDURE

(54 (d)(2)(B)
(d) Costs; Attorneys' Fees.
(2) *Attorneys' Fees.*
(A) [Omitted not relevant]
(B) Unless otherwise provided by statute or order of the court, **the motion must be filed and served no later than 14 days after entry of judgment**; must specify the judgment
and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.
(C) [omitted not relevant]
(D) By local rule the court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of subdivision (b) thereof and may refer a motion for attorneys' fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.
(E) [omitted not relevant]

LR56.1. Motions for Summary Judgment

(a) Moving Party. With each motion for summary judgment filed pursuant to Fed.R.Civ.P. 56 the moving party shall serve and file—

(1) any affidavits and other materials referred to in Fed.R.Civ.P. 56(e);

(2) a supporting memorandum of law; and

(3) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law, and that also includes:

(A) a description of the parties, and

(B) all facts supporting venue and jurisdiction in this Court.

The statement referred to in (3) shall consist of short numbered paragraphs, including within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion.

If additional material facts are submitted by the opposing party pursuant to section (b), the moving party may submit a concise reply in the form prescribed in that section for a response. All material facts set forth in the statement filed pursuant to section (b)(3)(B) will be deemed admitted unless controverted by the statement of the moving party.

(b) Opposing Party. Each party opposing a motion filed pursuant to Fed.R.Civ.P. 56 shall serve and file—

(1) any opposing affidavits and other materials referred to in Fed.R.Civ.P. 56(e);

(2) a supporting memorandum of law; and

(3) a concise response to the movant's statement that shall contain:

(A) a response to each numbered paragraph in the moving party's statement, including, in the case of any disagreement, specific references to the affidavits, parts of the record, and other supporting materials relied upon, and

(B) a statement, consisting of short numbered paragraphs, of any additional facts that require the denial of summary judgment, including references to the affidavits, parts of the record, and other supporting materials relied upon. All material facts set forth in the statement required

of the moving party will be deemed to be admitted unless controverted by the statement of the opposing party.

NEW LR 56.2 – Notice to Pro Se Litigants Opposing Summary Judgment

Any party moving for summary judgment against a party proceeding pro se shall serve and file as a separate document, together with the papers in support of the motion, a "Notice to Pro Se Litigant Opposing Motion for Summary Judgment" in the form indicated below. Where the pro se party is not the plaintiff, the movant should amend the form notice as necessary to reflect that fact.

NOTICE TO PRO SE LITIGANT OPPOSING MOTION FOR SUMMARY JUDGMENT

The defendant has moved for summary judgment against you. This means that the defendant is telling the judge that there is no disagreement about the important facts of the case. The defendant is also claiming that there is no need for a trial of your case and is asking the judge to decide that the defendant should win the case based on its written argument about what the law is.

In order to defeat the defendant's request, you need to do one of two things: you need to show that there is a dispute about important facts and a trial is needed to decide what the actual facts are or you need to explain why the defendant is wrong about what the law is.

Your response must comply with Rule 56(e) of the Federal Rules of Civil Procedure and Local Rule 56.1 of this court. These rules are available at any law library. Your Rule 56.1 statement needs to have numbered paragraphs responding to each paragraph in the defendant's statement of facts. If you disagree with any fact offered by the

defendant, you need to explain how and why you disagree with the defendant. You also need to explain how the documents or declarations that you are submitting support your version of the facts. If you think that some of the facts offered by the defendant are immaterial or irrelevant, you need to explain why you believe that those facts should not be considered.

In your response, you must also describe and include copies of documents which show why you disagree with the defendant about the facts of the case. You may rely upon your own declaration or the declarations of other witnesses. A declaration is a signed statement by a witness. The declaration must end with the following phrase: "I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct," and must be dated. If you do not provide the Court with evidence that shows that there is a dispute about the facts, the judge will be required to assume that the defendant's factual contentions are true, and, if the defendant is also correct about the law, your case will be dismissed.

If you choose to do so, you may offer the Court a list of facts that you believe are in dispute and require a trial to decide. Your list of disputed facts should be supported by your
documents or declarations. It is important that you comply fully with these rules and respond to each fact offered by the
defendant, and explain how your documents or declarations support your position. If you do not do so, the judge will be forced to assume that you do not dispute the facts which you have not responded to.

Finally, you should explain why you think the defendant is wrong about what the law is.

Federal Rules of Civil Procedure 56
Summary Judgment

(a) FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.
(b) FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.
(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
(d) CASE NOT FULLY ADJUDICATED ON MOTION. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and

what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) AFFIDAVITS MADE IN BAD FAITH. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

FRCP 83 Rules by District Courts; Judge's Directives

(a) LOCAL RULES.
(1) Each district court, acting by a majority of its district judges, may, after giving appropriate public notice and an opportunity for comment, make and amend rules governing its practice. **A local rule shall be consistent with**—but not duplicative of—**Acts of Congress and rules adopted under 28 U.S.C. §§ 2072 and 2075,** and shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments shall, upon their promulgation, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.
(2) **A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.**

(b) PROCEDURES WHEN THERE IS NO CONTROLLING LAW. A judge may regulate practice in any manner consistent with federal law,

rules adopted under 28 U.S.C. §§ 2072 and 2075, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

28 U.S.C. 2072 Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) **Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.**

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

28 U.S.C. 2074 Rules of procedure and evidence; submission to Congress; effective date

(a) The Supreme Court shall transmit to the Congress not later than May 1 of the year in which a rule prescribed under section 2072 is to become effective a copy of the proposed rule. Such rule shall take effect no earlier than December 1 of the year in which such rule is so transmitted unless otherwise provided by law. The Supreme Court may fix the extent such rule shall apply to proceedings then pending, except that the Supreme Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the court in which such proceedings are pending, the application of such rule in such proceedings would not be

feasible or would work injustice, in which event the former rule applies.

(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

U.S. CONSTITUTION
AMENDMENT V
[RIGHTS OF PERSONS]

Prosecution by presentment, indictment; double jeopardy; self-incrimination; due process; property taken for public use. No person shall be held...; **nor shall any person be** ... **deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII
[Right to Trial by jury in civil cases.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, **and no fact tried by a jury**, shall be otherwise re-examined in any Court of the United States

AMENDMENT XIV
(1868)

Section l. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State Wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

INTRODUCTION:

This is an age and sex discrimination case brought by a Pro Se litigant whose case was dismissed by the District Judge because Plaintiff incorrectly interpreted the requirements of writing her Summary Judgment, Statement of Material Facts and sworn affidavits in accordance with local rule 56.1. Her misunderstanding of this harsh local rule was used by the district judge to dismiss her case, and charge her with a frivolous law-suit. Unbeknownst to the Plaintiff, the district court, recognizing the difficulty in interpreting local rule 56.1, adopted a new rule for Pro Se litigants only, to help them prepare affidavits and Summary Judgments. Contrary to the direction of the District Magistrate, the Defendant's attorney, Stanley Eisenhammer of HODGES, LOZZI, EISENHAMMER, RODICK & KOHN, and who has over twenty five years of legal experience, knowingly chose to deceive Ellman by providing, not the new rule, but the old 56.1 local rule to Ellman the Pro Se litigant. Consequently the plaintiff was forced to prepare her documents without the benefit of the new and beneficial local rule 56.2. The United States Court of Appeals for the Seventh Circuit Court disallowed Appellant's defenses which were based on constitutional and local rules issues. Even when the Appellant submitted materials informing the U.S. Court of Appeals of her new awareness of the new local rule 56.2 on June 26, 2002; the Court allowed and granted Appellee's motion to strike these materials. Also another local rule, 54.3 enlarges the time to submit fees which appears contradictory to the corresponding FRCP. The U.S. Appeal Court for the

Seventh Circuit upheld the District Court and sanctioned Pro Se Appellant with legal fees, claiming the lawsuit was frivolous.

DISTRICT COURT CASE:

On or about September, 1988, Ellman was hired as a School Psychologist by the Woodstock School District 200, Mc Henry County, Woodstock, Illinois. Previous to that Ellman worked full-time in the Woodstock Schools as a SEDOM employee. Ellman became a member of the Woodstock Council of Teachers, McHenry County Federation of Teachers, ITF/AFT, AFL-CIO, Local 1640 in September 1988. Ellman was 51 years old at the time, in 1988, having been born on June 10, 1937. For several years

she had no problems with the School District, that is until she reached age 57. From that time on, the District was after her to retire, feeling that she was too old and desiring younger women. Finally following years of abuse, Ellman filed a complaint with the EEOC and the IDHR for the first time.

In 1998, that case went to court and Ellman lost through a summary judgment, as her counsel himself could not follow the requirement of Local Rule 56.1; one of the rules here at issue.

On April 10, 1998, and after the conclusion of the first case and upon a continued effort by the School District to force Ellman to retire, Ellman was again forced to file Charges of age and sex Discrimination and retaliation against The Woodstock #200 School District. The complaint was filed with the Equal Employment

Opportunity Commission, ("EEOC") and cross filed with the Illinois Department of Human Rights ("IDHR"). Ellman's charge of Discrimination was filed timely after the alleged unlawful employment practice occurred. Thus, Ellman had satisfied all administrative requirements. Ellman received a right to sue letter from the U.S. Department of Justice, Civil Rights Division dated October 28, 1998.

On January 12, 1999, after the School District intensified its efforts to coerce Ellman to take retirement, Ellman filed additional Charges of age, sex Discrimination and retaliation against The School District with the Equal Employment Opportunity Commission ("EEOC"). Ellman's Charge of Discrimination was filed timely after the alleged unlawful employment practice occurred. Thus, Ellman had satisfied all administrative requirements. Ellman received her second letter of right to sue dated February 22, 1999, from the Equal Employment Opportunity Commission.

The Background:

Ellman is a member of the class of persons protected by Illinois Law, more particularly 775 ILCS (The Illinois Human Rights Act), the state's Counterpart of Title VII, She was qualified for the job she was performing, and she was performing the job according to The School District's legitimate expectations.

Notwithstanding her qualifications and satisfactory job performance, she was subjected to different terms and conditions of employment then other younger and similarly-situated employees, who were treated more favorably than her, in the following.

On or about August 25, 1997, The School District assigned Ellman to a substandard classroom at (Yellow Hall room 226) at Woodstock High School, which was to be used as her office. There were other office spaces available.

On or about August 25, 1998, the School District assigned Ellman to a former custodian room (C249) which she was to use for her office. Plaintiff was in this office for two years (1998-1999 and 1999-2000). Ellman was informed by one of the high school custodians that asbestos wrapping insulation had been removed from the pipes during the summer of 1999.

The School District required Ellman to work beyond the normal school day without compensation for overtime, while other selected teachers were paid overtime for their work, beyond the normal school day.

The School District has continually harassed and threatened Ellman with unwarranted discipline. The School District continued to apply " Special Criteria for Successful Performance 1994-1995", only to Ellman, on a daily basis.. No other teacher had this criteria applied to them. This was deemed by the union to be an inappropriate document and was to be discontinued, however its use was still continuing at the time of the lawsuit, on a daily basis.

On or about January 7, 1999, and for a second time on Feb. 18, 2000, the School District failed to notify Ellman that school had been canceled due to severe weather, however all other teachers had been notified both times. The District failed to notify Ellman, only.

Ellman had evidence that was presented and ignored by the 'district judge', that the School District's harassment of her was with the ultimate goal of coercing her to retire. Male employees the same age and older than she, were not subject to the same standards and requirements as Ellman.

RETALIATION BY THE SCHOOL DISTRICT BECAUSE OF ELLMAN'S COMPLAINTS TO THE EEOC AND IDHR

Ellman had filed continuous and continuing charges of discrimination against the School District for age and sex discrimination, and for retaliation for her initial complaint.

Ellman was harassed by the School District because of her opposition to their unlawful activity. These second series of adverse employment actions occurred after and because of Ellman's complaints to the EEOC and the IDHR and amounted to retaliation.

Ellman should have been protected by The Illinois Human Rights Act. Through a Civil rights action in the Federal Court, she however never had a chance to bring her case before the finder of facts.

Ellman had been subjected to a long line of abuses by the School District, all calculated to force her to retire from a tenured position because:

a) Of her age. Plaintiff is 66 years of age, and
b) Plaintiff is a female. She was in a male-dominated district, while Dr. Joseph Hentges was the Superintendent. Ellman is the oldest female teacher/psychologist in the district.

<u>This Criteria was established and enforced for Ellman solely</u>

CRITERIA FOR SUCCESSFUL PERFORMANCE
1994-1995
MARILYN ELLMAN
SCHOOL PSYCHOLOGIST
WESTWOOD SCHOOL

1] Continue to complete case study evaluations in a timely and thorough manner.

2] Continue to work effectively with parents.

3] Primary responsibilities will be testing and special programs consultation. Counseling will be done only if time permits.

4] MDC/RAT responsibilities

a) Schedule initial and final RAT's on Arena Assessment children.

b) Schedule all initial RAT's within one week of receiving the referral and provide notice to the team members.

c) Schedule final RAT's, provide Notice to the team Members and make sure Maree is invited.

d) Responsible for bringing the Appropriate forms to the RAT's.

e) You are one of the team.

Your opinion is valuable. You are part of the decision. If you disagree with the team decision you can submit a letter of disagreement and it will be attached to the MDC form. To be part of the decision, you need to remain for the decision-making component of the process.

1. <u>Staffing Attendance</u>
   a) attend all staffings held in this building
2. <u>Professional Day</u>
   a) Staffings will be held after school.

Your professional day will conclude when the staffing concludes. Regular non-attendance will be an issue of concern.

3. Professional Relationships

a) Works cooperatively with arena assessment team members

b)Demonstrates respect for other building members and their opinions.

c)Demonstrates respect for supervisors.

4. Evaluation and Supervision

You will continue to have three supervisors/evaluators. Like any related service personnel, it is inherent that you will have multiple supervisors. Maree will be present for all staffings and will consult on the formatives and the summative. Dr. Rike and Dr. Ravitz will each conduct one formative each semester with a summative scheduled at the end of April. This is done so that any areas of concern that might arise can be addressed promptly.

[This special criteria should have been terminated in 1995 but was continued in ongoing daily requirements, only for Ellman]

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Remediation Plan

The Special Criteria (only for Ellman) was used by the Superintendent Joseph Hentges to place Ellman on a Harsh and Unjust Remediation Plan. This was done to Ellman, even though she was the only Nationally Certified School Psychologist in the school district. The Remediation Plan was faulty as it was non-specific and contrary to the Union Agreement.

Forced work without Pay

Ellman was forced to work many hours of overtime without pay. This was accomplished by forcing her to attend meetings, held both before and after the normal school day. This was often a 7:30 a.m. to 5:30 p.m. or more work day which was against the union agreement. weekend work was also required without pay. Even though the Union had an agreement from management that this abuse would stop, it did not stop. Ellman wants to be paid for the many hours of forced work

Blackballing Ellman

Ellman applied for a job with the Clark County School District in Nevada, and after a successful meeting, the Nevada school district spoke with Woodstock and thereafter refused to hire Ellman.

Placed in Substandard Rooms with Poor Air Quality

Ellman was placed in yellow/hall room 226 at Woodstock High School. from August 1997 to June 1998. Halliwell Engineering Associates Inc. on May 19, 1998, reported poor quality air in room 226. Yellow Hall Room 226 was Ellman's office space. The School District was aware of the poor air quality when Ellman was assigned to this office space, and was also transferred two times in three years to separate schools, contrary to the Union agreement.

Ellman was assigned to a custodian's storage room at Verda Dierzen Early Learning Center from in June of 1998 and to other spaces that had poor air quality. Environmental Science and Engineering, in July 16, 1999, documented poor air quality in these rooms. As a result of

being placed in poor air-quality spaces, Ellman has had severe health problems, which has severely affected her joints and vision. Approximately $15,000 worth of physical therapy and doctor's bills has been paid. Ellman continues to have a fear of dying of cancer because of her forced exposure to spaces with asbestos.

The District Has a History of Age and Sex Discrimination

1) Inez Peterson was terminated without cause because she was a woman and also 62 years of age.

2) John Vrett was refused employment because he was over the age of the school's preferred employment. He was discriminated against because of his age and because he had a disability.

3) Frank Bill left the school district because he was unable to achieve compliance with Illinois school code, due to interference from the superintendent.

4) Bev Alfeld left over discrimination.

5) Apollonia M. Reckamp filed a lawsuit over allegations of discrimination, fraud, and harassment, because of age.

6) Faith Gonzales was so harassed by a hostile environment that she committed suicide following a Saturday morning of forced work without pay. She left the high school, walked two blocks, and threw herself in front of an ongoing commuter train.

Ellman was told by a school board member that Superintendent Joe Hentges stated at a school board meeting that Ellman, too, would commit suicide. The continuing harassment was not stopped by the school board. HODGES, LOZZI, EISENHAMMER, RODICK & KOHN, attorneys, were the architects of school district 200

discrimination atrocities. The school board did not stop them.

The above illegal methods of abusive tormenting by Superintendent Joseph Hentges and the school district for sex and age cleansing, were designed, planned and conceived by the school district's attorneys under the direction of attorney Stanley Eisenhammer, Nancy Fredman Krent, Bennet Rodick and other associates, of the law firm of HODGES, LOZZI, EISENHAMMER, RODICK & KOHN. The attorneys became active participations of this illegal Age & Sex Cleansing. An example of the attorney's intimate involvement in these illegal activities is illustrated by the illegal Remediation Plan they designed for Ellman. This illegal plan contains the law firm's name of HODGES, LOZZI, EISENHAMMER, RODICK & KOHN on each page. HODGES, LOZZI, EISENHAMMER, RODICK & KOHN designed this remediation plan for Ellman to be punitive, not remedial.

Procedural Background:

Appellant's original complaint was filed within the prescribed time limits of her EEOC Charge I. On May 19, 1999, Ellman filed a motion to amend her complaint to include facts set forth in Charge II. Her motion was denied without prejudice on May 26, 1999, because appellant had not attached a copy of the second Notice of Right to Sue. On May 28, 1999 the court received appellant's second motion to amend her complaint, which the court granted on June 11, 1999.

At the same time the court granted the motion of Appellants Counsel, Rene Hernandez, to withdraw from the case. Appellant has continued the case Pro Se, as she was

unable to afford another attorney. Hernandez withdrew after Plaintiff had paid Hernandez over $5,000 in fees obtained through a loan.

On June 22, 1999, Ellman filed a Motion for Change of Venue, believing that she could not receive a fair and impartial trial from the District Judge, Judge Philip G. Reinhard, who had in the prior case ruled in favor of the Defense by their Summary Proceedings. (See Appendix F) This motion was denied. (See Appendix G)

Appellant filed her Third Amended Complaint on February 4, 2000 against Woodstock School District for: Age and Sex Discrimination. This was based on age and sex discrimination, Retaliation, Breach of the Implied Covenant of Good Faith and Fair Dealing, Breach of Contract and Forced Involuntary Servitude. The Court denied two counts; Appellant filed her Dispositive Motion with an affidavit on July 31, 2000. A supplementary affidavit was accepted in court November 15, 2000. A second Supplementary affidavit and Plaintiff's Statement of Material Facts was submitted on November 15, 2000. A latter third supplementary affidavit was submitted with her Motion replying to Defendant's Memorandum of Law on Plaintiff's Material Facts. Judge Reinhard rescinded her affidavits because they did not comply with local rule 56.1.

Appellee filed their Dispositive Motions on November 1, 2000, January 9, 2001 and January 22, 2001. The court granted summary judgment to The School District, "disregarding Ellman's affidavits" and deeming her failure to follow L.R. 56.1 an admission of the Appellee's facts. Thus summary judgment was granted to The School District on February 26, 2001. In its order granting summary judgment, the court held the following:

1. That Ellman failed to follow L. R. 56.1 by not responding to the defendant's motion on a numbered paragraph basis; Memorandum Opinion and Order, Appendix C. There was no consideration by the court's failure to provide Pro Se Ellman with the new Pro Se LR 56.2 information which would have helped her to properly number the paragraphs and properly submit the Affidavits.

2. That Ellman, a pro se litigant, should be held to the same standards as an attorney; Opinion and Order, Appendix C. The court Further stated erroneous facts to support its memorandum. For instance:

a. That Ellman has not received a salary Decrease; Opinion and Order, appendix C. [Ellman had in fact received a salary decrease by her requirement to attend before and after school meetings without additional pay.]

b. That Ellman is required to attend meetings

before and after school, without pay contrary to the Union Agreement; Opinion and Order. [Ellman was required after her special criteria, and in violation of the Union Contract.]

3. That the court is not required to scour the record to unearth material factual disputes; Opinion and Order, Appendix C, [however the court is mandated to do justice between the parties].

4. That Ellman is collaterally estopped from pursuing claims of discrimination "when she has litigated a cause of action for discrimination" even though the discrimination is of a continuing nature, and occurs after a prior litigation: Opinion and Order, Appendix C;
[Ellman also lost the prior litigation by summary judgment as her then counsel also could not follow the requirement of LR 56.1.] This LR has prevented her from having her day in court.

On July 31, 2000 Ellman filed her motion for Summary judgment. The motion was accompanied by an affidavit setting forth her evidence and attachments were made thereto.

The School District requested permission to file a late motion for summary judgment, that motion was granted. Ellman was granted permission to supplement and/or amend her motion for partial summary judgment. Ellman responded thereto, also submitting affidavits and her statement.

Ellman's motion and affidavits did not specifically refer to the page and line in the affidavits or evidence, but referred to the affidavits or evidence offered therein more generally. The District Court struck the affidavits as not complying with local rule 56.1 and thereafter granted summary judgment to the defense in accord with LR 56.1 which allowed the judge to deem the statements of the defense as true.. The Defendants were further awarded Attorney's fees.

THE APPEAL TO THE SEVENTH CIRCUIT

An appeal followed to the Seventh Circuit where the District court Judgment was affirmed. Ellman argued that the Local Rules 54.3 and 56.1 were basic procedural innovations and therefore constitutionally unfair as they 1] provided for a forfeiture and 2] substantially enlarged the time for performance from the FRCP 54(d)(2)(B). By accident Ellman discovered the existence of new LR 56.2 for Pro Se litigants on June 26, 2002; that the court did not provide her. Ellman give the court Judicial Notice of her finding of the LR 56.2 that attorney EISENHAMMER did not provide her. He was directed to give Plaintiff LR 56 information on November 1, 2000. Attorney Eisenhammer,

knowingly provided the incorrect LR 56.1 instead of the correct LR 56.2, as he was directed to do by Magistrate P. Michael Mahoney.

Ellman further argues consistent with her appeal that the Federal District Court Judges are abusing the summary Judgment Procedure in form and substance. Therefore many cases are summarily dealt with, that should proceed to trial, and therefore deny the parties who have valid complaints and the evidence to proceed to trial, and obtain their day in court. Local rules and "technicalities of form" are the tools utilized by the federal District Courts which create forfeitures, where they should not be warranted. Litigants, primarily Pro Se Plaintiffs, are not receiving Justice in the Federal Court System. Procedures need to be put in place by the Supreme Court to insure that any case that has merit has an opportunity to proceed to a fact finder.

REASONS FOR GRANTING THE WRIT

The United States Supreme Court should grant the Writ, in order to correct the abuses of local rules which are inconsistent with the FRCP, and to provide clear and unambiguous guidelines for the District Court Judges in regards to the local rules and when summary judgment is and is not proper.

This Appellant suggests that the use of the Summary Judgment procedure is being abused by the Federal Courts to such an extent that Pro Se litigants with real issues and supportive "EVIDENCE" seldom have their day in court.

The Supreme Court should Grant the Writ in order to review the Local Rules of the Seventh Circuit as brought

to issue by this Writ, and to take a second look at how summary Judgment is being abused by the Federal Judges to limit Pro Se litigants' access to a fair trial and justice.

There are several issues that need to be resolved by the Supreme Court in order that Pro Se litigants will be able to receive justice through the Federal system. These reasons affect millions of people who are not paupers, yet cannot afford an attorney. Access to justice needs to be available to this large group of people of which Ellman is one.

1] Local Rule 56.1 for the U. S. District Court Northern District of Illinois; This rule is a basic procedural innovation, in that it provides for forfeiture beyond the perimeters of the Federal Rule 56. The rule is being applied in such a manner that very few cases can meet its harsh requirements, and hundreds of cases fail the test. And even though they can meet the proof of evidence to bring a case to trial, they are foreclosed from litigating their claims by virtue of LR 56.1. In any other jurisdiction many of these cases would withstand the Summary Judgment Motion.

2] New Local Rule 56.2 of the U.S. District Court Northern District of Illinois, was adopted to help Pro Se litigants to overcome the difficulties of LR 56.1. However, Ellman, unfortunately was denied the knowledge of the existence of this new rule by Respondent's attorney Eisenhammer, who was ordered by Magistrate Mahoney to provide Ellman with LR 56 information. Attorney Stanley Eisenhammer, knowingly chose not to inform Ellman of new Pro Se LR56.2. Consequently Judge Reinhard chose the opportunity to use Ellman's faulty interpretation of LR 56.1 to declare her case frivolous.

3] Local Rule 54.3 for the U.S Northern District Court of Illinois; This rule is also a basic procedural innovation, in that it enlarges the time for performance under Federal Rule 54. Federal Rule 54 allows an attorney 14 days from and after judgment to file his motion for fees. LR 54.3 allows an attorney 90 days from and after judgment to file his motion for fees.

If the Courts are to be the ultimate arbitrator, and seeker of the truth, their solitary purpose and reason for existence is to give and do justice between the opposing parties. They however have reached a place where procedure overshadows the evidence of the case. The search for justice is inhibited by ridged inflexible rules. These rules are calculated to, instead of searching for the truth, to prevent the truth from being exposed.

In the instant case, this Pro Se Petitioner, has the quantum of evidence to take her claim to the trier of fact, but she was precluded from doing so by virtue of local rule 56.1. She was not provided, at the time, notice of the new Pro Se LR 56.2, and the LR 56.1 rule was used to create forfeiture by disregarding Ellman's evidence and granting judgment to the Defendant without ever resolving the Discrimination charges at issue. Also the Seventh Circuit chose to punish Pro Se Ellman, and sanctured her by ordering her to pay costs and legal fees to the Appellee.

For the general good of the country and especially the majority of citizens of the United States who are not paupers, but of modest means, and need to act legally Pro Se, the Supreme Court needs to protect their access to justice. This will form a more Perfect Union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

These are mandates of our heritage and Constitution As a Daughter of the American Revolution; this is what Ellman's ancestors fought for and what she is fighting for now to the best of her ability, as a Pro Se Litigant.

CONCLUSION

The court should therefore grant this Writ of Certiorari in order to address these public concerns and to resolve these important issues of law involving the Constitution and Access to Justice by Pro Se Litigants.

Respectfully submitted,

Marilyn I. Ellman, Pro Se Petitioner

Dated: July 18, 2003